

## Message Text

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ACTION L-03

INFO OCT-01 IO-03 ISO-00 DRC-01 RSC-01 /009 W

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R 241745Z SEP 74

FM USMISSION GENEVA

TO SECSTATE WASHDC 8425

C O N F I D E N T I A L GENEVA 6025

PASS GEORGE H. ALDRICH, DEP LEGAL ADVISER FROM  
DR. R.S. GRAYSON, INSTITUTE HENRY-DUNANT, 114 RUE DE  
LAUSANNE, 1202 GENEVA.

E.O. 11652: GDS

TAGS: PFOR PARM ICRC

SUBJECT: HUMANITARIAN LAW

1. "AS I DISCUSSED WITH YOU IN SANREMO, CERTAIN EAST EUROPEAN, AFRICAN AND ARAB STATES WHICH PREVIOUSLY VOTED FOR AMENDED ARTICLE 1 (CDDH/I/71) HAVE INDICATED TO ME PRIVATELY THAT THEY WOULD OR MAY AGREE TO COMPROMISE ON THE ARTICLE EITHER BY DELETING CERTAIN OFFENSIVE PHRASES WHILE RETAINING REFERENCE TO SELF-DETERMINATION AND WARS OF LIBERATION OR BY SUBSTITUTING A DIFFERENT ARTICLE WHICH MAY REFER TO ALL FORMS OF ARMED CONFLICT, THUS WIDENING PARAMETERS WITHOUT INCLUDING POLITICAL STATEMENTS, THE MINIMUM MAGNITUDE OF WHICH IS NEGOTIABLE. THE FORMER IS THE MORE LIKELY.

2. "CERTAIN KEY STATES, SUCH AS EAST GERMANY, WILL NOT AT THIS TIME NEGOTIATE THE WORDING OF ARTICLE 1 FURTHER TO THEIR PROPOSALS IN COMMITTEE I. HOWEVER IT WAS INDICATED TO ME THAT IT MAY WELL ACCEPT YOUR POSSIBLE NEW ARTICLE CONCERNING JUST WARS.

3. "MY CONTACT AT THE CHINESE CONSULATE HAS INFORMED ME THAT HE HAS BEEN INSTRUCTED NOT TO ENTER INTO DISCUSSIONS ON THE PROTOCOLS.

4. "OF THOSE AFRO-ASIAN STATES WHICH WILL NOT COMPROMISE ON THE WORDING OF ARTICLE 1, MOST WILL ACCEPT YOUR DRAFT ARTICLE. INDIA HAS INDICATED THAT ALTHOUGH IT CANNOT CHANGE THE WORDING OF ARTICLE 1  
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IT WILL ACCEPT YOUR PROPOSAL AND FURTHER SUGGESTS AS A BASIS FOR

COMPROMISE THE INTRODUCTIONS OF THE MARTENS CLAUSE. SHOULD THIS PROVE ACCEPTABLE, INDIA WILL PRESS CERTAIN INTRANSIGENT ARAB, AFRICAN AND ASIAN STATES ON THIS POINT AND ITSELF PROPOSE THE NEW ARTICLE CONTAINING MARTENS CLAUSE.

5. " CERTAIN STATES WHICH ABSTAINED ON VOTE CDDH/I/71 HAVE NOW INDICATED THEIR WILLINGNESS TO ACCEPT NEW NEGOTIATION OF ARTICLE 1 IN ABEYANCE UNTIL PROTOCOLS NEGOTIATED. HOWEVER THIS MAY INTRODUCE LEGAL RATHER THAN POLITICAL DIFFICULTIES AS ARTICLE 1 MAY WELL AFFECT THE LEGAL CONTENT OF SUBSEQUENT ARTICLES.

6. "REQUEST YOUR COMMENTS AND SUGGESTIONS ON ABOVE AT EARLIEST POSSIBLE DATE, PARTICULARLY:

- 1) IF YOU AGREE TO INCLUSION OF MARTENS CLAUSE ARTICLE;
- 2) IF ARTICLE 1 (CDDH/I/71), YOUR PROPOSED ARTICLE ON JUST WARS, AND MARTENS CLAUSE ARTICLE WOULD BE ACCEPTABLE COMBINATION;
- 3) SHOULD SUGGESTION OF MARTENS CLAUSE BE TENTATIVELY ACCEPTABLE, IF YOU WISH TO DRAFT A POSSIBLE MARTENS CLAUSE ARTICLE UPON WHICH I COULD THEN UNOFFICIALLY SOLICIT COMMENTS;

7. "IF THERE ARE ANY PARTICULAR GOVERNMENTS YOU WISH ME TO APPROACH PRIVATELY ON CERTAIN MATTERS REGARDING ABOVE."

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** POLICIES, AGREEMENT DRAFT, LAW, WAR, INTERNATIONAL ORGANIZATIONS, MEETING VOTING RECORDS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 24 SEP 1974  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** izenbei0  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1974GENEVA06025  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** GS  
**Errors:** N/A  
**Film Number:** D740270-0039  
**From:** GENEVA  
**Handling Restrictions:** n/a  
**Image Path:**  
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**Legacy Key:** link1974/newtext/t19740920/aaaaaqkg.tel  
**Line Count:** 87  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Office:** ACTION L  
**Original Classification:** CONFIDENTIAL  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 2  
**Previous Channel Indicators:**  
**Previous Classification:** CONFIDENTIAL  
**Previous Handling Restrictions:** n/a  
**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** izenbei0  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 18 JUN 2002  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <18 JUN 2002 by boyleja>; APPROVED <11 MAR 2003 by izenbei0>  
**Review Markings:**

Declassified/Released  
US Department of State  
EO Systematic Review  
30 JUN 2005

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** HUMANITARIAN LAW  
**TAGS:** PFOR, PARM, SHUM, XX, ICRC  
**To:** STATE  
**Type:** TE  
**Markings:** Declassified/Released US Department of State EO Systematic Review 30 JUN 2005